Filed 1/11/19 P. v. Garrett CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. JOYCE MIGNON GARRETT, Defendant and Appellant.	C080236 (Super. Ct. No. 14F07681)

After the trial court denied her motion to suppress evidence (Pen. Code, § 1538.5), defendant Joyce Mignon Garrett pleaded no contest to misdemeanor possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). Under the terms of the plea agreement, defendant was given three years' probation and was ordered to serve 120 days in jail.

Defendant contends that the court erred in denying her motion to suppress. She also asks us to independently review the sealed record of the hearing on her *Pitchess*[1] motion to confirm that no discoverable evidence existed concerning the searching deputy's propensity for dishonesty, acts of moral turpitude, excessive force or false reporting. We conclude the trial court properly denied the motion to suppress, and, having reviewed the sealed transcript of the *Pitchess* hearing, we conclude that no additional information was discoverable under *Pitchess* and its progeny. We therefore affirm the judgment.

I. BACKGROUND

A May 2015 information charged defendant with felony possession of methamphetamine for the purpose of sale. (Health & Saf. Code, § 11378.) She pleaded not guilty, and moved to suppress the evidence against her. The following facts were developed at the hearing on defendant's motion to suppress evidence:

In November 2014, the Sacramento County Sheriff's Department received a citizen complaint from someone living on Fenwick Way in Sacramento that Black males and Black females were engaging in hand-to hand-drug sales with passing cars near the intersection of Fenwick Way and Longdale Drive. The complainant believed the individuals were from a nearby house with a "box trailer" on the property.

After receiving the complaint, Deputy Jeffrey Massagli personally surveyed the area and identified a house located on Fenwick Way with a large box trailer that matched the description in the complaint. The house was about eight or nine houses down from the intersection of Fenwick Way and Longdale Drive.

Massagli conducted a records check of the area in the department's Known Persons File database. That database includes information regarding whether a person is

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[1] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

on probation as well as his or her address, but does not include copies of actual probation documents. From the database, Massagli learned that an African American woman on probation, defendant, lived at the home on Fenwick Way with the box trailer. According to the information he discovered, defendant was on formal searchable probation out of Placer County until October 2016.[2]

Given defendant's probationary status and the citizen complaint of drug sales coming from that location, Massagli and other deputies went to the Fenwick Way house on November 10, 2014, at approximately 1:40 p.m. to conduct a probation search. After knocking on the front door, a male voice asked, "who is it?" Massagli stated they were the sheriff's department and that they were there to conduct a probation search. He then heard a lot of "shoveling" or "activity" inside the house, including feet moving around and doors closing, before a man finally opened the front door.

Inside, officers found a Caucasian man, four African American men, and two African American women. Defendant was not among those individuals. The officers detained the individuals while they conducted a protective sweep of the house. During the sweep, deputies discovered that the master bedroom door was locked. The deputies asked the detained occupants if anyone had a key to the door, and none of them responded. Massagli also asked whether the bedroom belonged to any of them, and they all responded that it did not.

Massagli's partner kicked the door open and found defendant lying on the bed fully clothed. Massagli searched defendant and found a clear plastic baggie containing

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[2] During the hearing on the motion to suppress, the court admitted a certified copy of defendant's Placer County probation conditions as court exhibit 1. A copy of the exhibit is not included in the record on appeal, however, a condition of defendant's probation, as later described by the court, required that she subject her person, vehicle or residence to search or seizure anytime without the benefit of a warrant as directed by any peace officer.

methamphetamine in her pants pocket. In a portion of the house defendant identified as her office, deputies located three boxes of the same kind of clear plastic baggies and two digital scales. A laptop computer with defendant's name as the screensaver and a cellular phone that received an e-mail addressed to defendant were also found while the officers were searching. Other mail with defendant's name was also located at the address.

During cross-examination, Massagli acknowledged that he did not contact the probation department prior to initiating the search. He did not know the facts of the particular charge underlying defendant's grant of probation, or whether probation had conducted any prior visits to defendant's residence. He did not check who was on the lease for the house and he did not know what kind of car, if any, defendant drove. Nor had he seen defendant at the property the day of the search.

After considering the parties' moving papers and hearing the arguments of counsel, the court denied the motion to suppress. The court found that defendant was on searchable probation out of Placer County, and that the probation condition, as evidenced by court exhibit 1 admitted during the hearing, required her to "submit [her] person, vehicle or residence to search or seizure anytime without the benefit of a warrant as directed by any peace officer." The court also found that Massagli knew of defendant's search terms before conducting the search. It found that the probation department said defendant lived at the Fenwick Way house, that defendant was associated with the house, and that "[i]t wouldn't take a lot of sleuthing to think it might be the probationer who [was] behind that locked door."

Following the denial of her motion to suppress, defendant pleaded no contest to misdemeanor possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) The court placed her on three years' probation and ordered her to serve 120 days in jail. Defendant timely appealed.

II. DISCUSSION

A. Motion to Suppress

Defendant contends the trial court erred in denying her suppression motion. She challenges the search of her residence on multiple grounds, including that officers did not have reason to believe she lived at the residence and was present at the time they conducted the probation search, that insufficient evidence supported the trial court's findings, that the search was excessive in scope because insufficient evidence showed officers were aware of defendant's probation search terms, that the search did not qualify as a valid protective sweep, and that the officers did not reasonably believe the locked bedroom in which defendant was found was under her control. Given these alleged shortcomings, she argues that all fruits of the entry and search should have been suppressed. We are not persuaded.

"As the finder of fact in a proceeding to suppress evidence (Pen. Code, § 1538.5), the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable." (*People v. Woods* (1999) 21 Cal.4th 668, 673 (*Woods*).) In reviewing an order denying a motion to suppress, we review the record in the light most favorable to the order since " 'all factual conflicts must be resolved in the manner most favorable to the [superior] court's disposition on the [suppression] motion.' " (*Ibid.*) "But while we defer to the superior court's express and implied factual findings if they are supported by substantial evidence, we exercise our independent judgment in determining the legality of a search on the facts so found." (*Id.* at pp. 673-674.)

1. The Probation Search of Defendant's Residence was Proper

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and provides that "no warrants shall issue, but upon probable cause, supported by oath or

affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (U.S. Const., 4th Amend.) "A search conducted without a warrant is unreasonable per se under the Fourth Amendment unless it falls within one of the 'specifically established and well-delineated exceptions.' " (*Woods, supra*, 21 Cal.4th at p. 674.)

One well settled exception to " 'the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.' " (*Woods, supra*, 21 Cal.4th at p. 674.) In California, probationers may validly consent in advance to warrantless searches and seizures in exchange for the opportunity to avoid prison. (*Ibid.*; *People v. Bravo* (1987) 43 Cal.3d 600, 608 ["[a] probationer . . . consents to the waiver of his Fourth Amendment rights in exchange for the opportunity to avoid service of a state prison term"].)

"Warrantless searches are justified in the probation context because they aid in deterring further offenses by the probationer and in monitoring compliance with the terms of probation." (*People v. Robles* (2000) 23 Cal.4th 789, 795 (*Robles*).) A probation search is "limited in scope to the terms articulated in the search clause [citation] and to those areas of the residence over which the probationer is believed to exercise complete or joint authority." (*Woods, supra*, 21 Cal.4th at p. 681.)

" '[W]here probation officers or law enforcement officials are justified in conducting a warrantless search of a probationer's residence, they may search a residence reasonably believed to be the probationer's.' " (*People v. Downey* (2011) 198 Cal.App.4th 652, 658 (*Downey*).) Courts are split on whether the question of reasonable belief is one of fact or law, or a mixed question of fact and law.[3] We need not

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[3] In *Downey*, for example, the Fourth Appellate District held that " '[t]he question of whether police officers reasonably believe an address to be a probationer's residence is one of fact, and we are bound by the finding of the trial court, be it express or implied, if

decide the issue here because under any standard we conclude that the officers reasonably believed defendant lived at the Fenwick Way home when they conducted the probation search.

In this case, the trial court found that defendant was subject to a probation search condition that allowed law enforcement to conduct a warrantless search of her residence at any time. The terms of her probation search condition were admitted into evidence during the suppression hearing, and the court described the search term as follows: "it is a probation condition that says a person must submit their person, vehicle or residence to search or seizure anytime without benefit of a warrant as directed by any peace officer."

While defendant acknowledges that she was subject to a search condition, she argues that the prosecution failed to show that Massagli had reason to believe she lived at the Fenwick Way house and was present at the time he conducted the probation search. She relies primarily on *Payton v. New York* (1980) 445 U.S. 573, 603 [63 L.Ed.2d 639] (*Payton*), which held that "for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." She argues that the "reason to believe" standard announced in *Payton* is equivalent to "probable cause," citing primarily Ninth Circuit cases as support.[4]

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substantial evidence supports it.' " (*Downey, supra,* 198 Cal.App.4th at p. 658.) In *People v. Carreon* (2016) 248 Cal.App.4th 866, 876, by contrast, the Sixth Appellate District held that " '[t]he constitutional precept of "reasonableness" as to searches and seizures is not a "fact" which can be "found" or not found in any given case. Rather, it is a standard, a rule of law, external, objective and ubiquitous, to be applied to the facts of all cases.' " "What is objectively reasonable is a question of law, not fact." (*Ibid.*; see also *United States v. Risse* (8th Cir. 1996) 83 F.3d 212, 215 (*Risse*) ["Whether the police officers possessed a reasonable belief that [a person subject to an arrest warrant] resided on Huntington Road 'is a mixed question of fact and law' "].)

[4] See, e.g., *United States v. Grandberry* (9th Cir. 2013) 730 F.3d 968; *United States v. Bolivar* (9th Cir. 2012) 670 F.3d 1091; *United States v. Franklin* (9th Cir. 2010) 603 F.3d

Payton does not govern this case. (*Payton, supra*, 445 U.S. at p. 574 [considering the constitutionality of New York statutes authorizing police officers to enter a private residence without a warrant and with force, if necessary, to make a routine felony arrest].) "Before addressing the narrow question" in *Payton*, the Supreme Court emphasized several issues that were *not* presented by the case, including entries made with the consent of any occupants. (*Id.* at pp. 582-583.) Because probationers in California consent in advance to warrantless searches in exchange for the opportunity to avoid serving a state prison term (*Woods, supra*, 21 Cal.4th at p. 674), like defendant did here, *Payton*, which dealt with a *nonconsensual* entry, simply does not apply to the circumstances here.[5]

The terms of defendant's probation search condition further support our conclusion that *Payton* does not apply to consensual probation searches. As the trial court explained, "it is a probation condition that says a person must submit their person,

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652; *United States v. Howard* (9th Cir. 2006) 447 F.3d 1257; *United States v. Gorman* (9th Cir. 2002) 314 F.3d 1105; *Motley v. Parks* (9th Cir. 2005) 432 F.3d 1072; *United States v. Harper* (9th Cir. 1991) 928 F.2d 894.

[5] Because *Payton* is inapposite, we need not address defendant's argument that *Payton's* reasonable belief standard is akin to probable cause. (Cf. *Downey, supra*, 198 Cal.App.4th at pp. 660-661 [reasonable belief is less than probable cause]; see also *United States v. Thomas* (D.C. Cir. 2005) 429 F.3d 282, 286 ["We think it more likely, however, that the Supreme Court in *Payton* used a phrase other than 'probable cause' because it meant something other than 'probable cause' "]; *Valdez v. McPheters* (10th Cir. 1999) 172 F.3d 1220, 1225-1226; *Risse, supra*, 83 F.3d at p. 216; *United States v. Lauter* (2d Cir. 1995) 57 F.3d 212, 215; *United States v. Magluta* (11th Cir. 1995) 44 F.3d 1530, 1534 ["[t]he strongest support for a lesser burden than probable cause remains the text of *Payton*, and what we must assume was a conscious effort on the part of the Supreme Court in choosing the verbal formulation of 'reason to believe' over that of 'probable cause' "]; with *United States v. Grandberry, supra*, 730 F.3d at pp. 973-974 ["probable cause as to residence exists if an officer of 'reasonable caution' would believe, 'based on the totality of [the] circumstances,' that the parolee lives at a particular residence"]; *United States v. Bolivar, supra*, 670 F.3d at p. 1095 [probable cause to believe probationer lives at premises is required].)

vehicle or residence to search or seizure *anytime* without benefit of a warrant as directed by any peace officer." (Italics added.) The term *anytime* is clear and unambiguous, and it does not connote a limitation that law enforcement must reasonably believe the probationer is home before initiating a search pursuant to the probation condition. We decline to read such a limitation into the condition. (*Woods, supra*, 21 Cal.4th at p. 690, dis. opn. of Brown, J. [noting that probation search conditions "generally require[] a probationer to submit his or her person and property to search or seizure at any time of the day or night by any law enforcement officer with or without a warrant"].)

In California, the appropriate test in the probation search context is whether the facts known to the officers, taken as a whole, gave them *objectively reasonable grounds to believe* that defendant lived at the Fenwick Way house. (*Downey, supra*, 198 Cal.App.4th at p. 658 [" 'where probation officers or law enforcement officials are justified in conducting a warrantless search of a probationer's residence, they may search a residence reasonably believed to be the probationer's' "];[6] *Robles, supra,* 23 Cal.4th at p. 797 ["a search of a particular residence cannot be 'reasonably related' to a probationary purpose when the officers involved do not even know of a probationer who is sufficiently connected to the residence"]; *People v. Palmquist* (1981) 123 Cal.App.3d 1, 11 ["It is settled that where probation officers or law enforcement officials are justified in conducting a warrantless search of a probationer's residence, they may search a residence reasonably believed to be the probationer's"], disapproved on other grounds in *People v. Williams* (1999) 20 Cal.4th 119, 134-135.) Applying this standard, the entry

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[6] To the extent *Downey* concludes that *Payton's* standard for executing an arrest warrant—that officers must have a reasonable belief that the suspect is present before executing the warrant—applies to probation searches, we respectfully disagree. (See *Downey, supra*, 198 Cal.App.4th at p. 662 ["we expressly hold that an officer executing an arrest warrant *or conducting a probation or parole search* may enter a dwelling if he or she has only a 'reasonable belief,' falling short of probable cause to believe, the suspect lives there *and is present at the time*" (italics added)].)

into and search of defendant's house was lawful. The facts as known to the officers at the time of the search supported the officers' reasonable belief that defendant resided at the Fenwick Way home.

Massagli testified that after receiving a tip that Black women and men were engaged in drug transactions at the intersection of Fenwick Way and Longdale Drive and were from a nearby home with a large box trailer on the property, he visually inspected the area and located a house on Fenwick Way matching the complaint's description. Upon locating the Fenwick Way house, he checked the police Known Persons File database and learned that the house was listed as the residence of defendant, an African American woman. According to the Known Persons File database, defendant was on formal searchable probation until October 15, 2016.

The record is devoid of any evidence showing that the police database which Massagli consulted was unreliable or otherwise contained faulty information.[7] Nor was there any evidence presented that the Fenwick Way address, which defendant listed for probation purposes, had become stale. Massagli thus reasonably relied on the Known Persons File database in concluding that the Fenwick Way house was defendant's residence and that she was subject to a probation search condition. This is especially so given the other information available to Massagli at the time, including the tip that

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[7] An officer's testimony to information that he or she obtained from a file or an electronic database, without proof of that information by direct presentation of what the officer looked at in admissible form, is hearsay, just as an officer's reliance on secondhand information received from other officers would be hearsay, implicating the *Harvey-Madden* rule. (See *People v. Madden* (1970) 2 Cal.3d 1017; *Remers v. Superior Court* (1970) 2 Cal.3d 659; *People v. Harvey* (1958) 156 Cal.App.2d 516.) We have no occasion to address that issue, however, because defendant raised it for the first time on appeal. Defendant made no *Harvey-Madden* objection to any of Massagli's testimony below, and thus forfeited it. (See *People v. Rogers* (1978) 21 Cal.3d 542, 547-548 (*Rogers*) [applying "bar against raising a *Harvey/Madden* issue for the first time on appeal"].)

African American women coming from a house matching the description of the house on Fenwick Way were selling drugs on a nearby street corner, and that defendant was African American.

Defendant's argument that Massagli could have conducted more research into whether the residence was hers by contacting her probation officer or checking lease agreements or utility bills does not mean that Massagli acted unreasonably by relying on the information contained in the police database. (*People v. Ledesma* (2003) 106 Cal.App.4th 857, 864 (*Ledesma*) [" 'A creative judge engaged in *post hoc* evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished' "].) The question is not simply whether some other alternative was available, but whether the police acted unreasonable in failing to pursue it. (*United States v. Sharpe* (1985) 470 U.S. 675, 687 [84 L.Ed.2d 605].)

It is well settled that the warrantless search of a probationer's home need not be initiated, conducted or even supervised by a probation officer to qualify as a valid probation search. (*Woods, supra*, 21 Cal.4th at p. 694.) And, defendant cites no authority that requires officers to search lease or utility records before conducting a probation search on a residence that the probationer has listed as his or her address. (*United States v. Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1258, 1267 [officers' failure to check utility or property records to confirm arrestee's address did not mean they did not have reasonable belief based on other evidence that the arrestee resided at the address]; *United States v. Lovelock* (2d Cir. 1999) 170 F.3d 339, 344 ["the constitutional requirement is that [officers] have a basis for a reasonable belief as to the operative facts, not that they acquire all available information or that those facts exist"].)

Defendant's reliance on *Downey* for the proposition that officers must check multiple sources before reasonably concluding a probationer is sufficiently connected to a particular residence is misplaced. While the officer in *Downey* did search different

databases (*Downey, supra*, 198 Cal.App.4th at p. 659), since the probationer listed different addresses with various agencies, nothing in the opinion *requires* that officers research multiple databases, especially when a probationer, like defendant here, listed a specific residence with probation.

Defendant's contention that there is no evidence defendant self-reported the Fenwick Way residence to probation, or that the information came from probation, improperly views the evidence in the light most favorable to her rather than to the court's order. (*Woods, supra*, 21 Cal.4th at p. 673.) When viewed properly, the court could reasonably infer that defendant reported the Fenwick Way address as her residence to probation. Massagli testified that defendant's "address of record through Probation" was the Fenwick Way residence. He also noted that probationers are required by law to be truthful in reporting their addresses. Although it is true that Massagli did not review the probation condition document from Placer County admitted as court exhibit 1 at the hearing, he did testify that the police database contained both probation condition information and address information for probationers.

The fact that a box trailer was present on the property does not mean Massagli acted unreasonably in concluding defendant resided in the house and not the trailer. No evidence showed the trailer was habitable or that defendant had listed the trailer with probation as her address of record.

Defendant's contention that there is insufficient evidence to show Massagli was aware of her specific search terms prior to entering the Fenwick Way home is also without merit. While it is true that an officer conducting a probation search must have advance knowledge of the search condition (*Robles, supra*, 23 Cal.4th at pp. 797-799), considering the record in the light most favorable to the People (*Woods, supra*, 21 Cal.4th at p. 673 [" 'all factual conflicts must be resolved in the manner most favorable to the [superior] court's disposition on the [suppression] motion' "), sufficient evidence

supports the trial court's finding that Massagli knew the terms of defendant's search clause before conducting the probation search.

Massagli testified that he checked the Known Persons File database's probation page, which gave him "the date *and type of probation*." (Italics added.) He also testified that the Known Persons File database gave him "the information [from the actual probation document], not actually a photo or a picture of the document itself, *just the information contained on it*." (Italics added.) From this testimony, the court could reasonably infer that Massagli was aware of the terms of the search condition.

The court, moreover, admitted into evidence defendant's Placer County probation terms, including the search condition which authorized a search of her residence. These facts distinguish this case from *People v. Romeo* (2015) 240 Cal.App.4th 931, 950, where "there was nothing in the record to aid an objective evaluation of the scope of advance consent that was given [by the probationers]." Unlike in *Romeo*, the trial court knew the precise scope of defendant's search condition, and could reasonably infer from Massagli's testimony that he knew the same before executing the search. (Cf. *id.* at pp. 950-951 [noting that no evidence showed whether the authorized scope of search extended just to the persons of Mills and Bolstad, or to all property under their control as well; and if it did extend to their property, whether it extended specifically to their residence].)

Finally, defendant argues that officers did not have a reasonable basis to believe that she exclusively or jointly controlled the locked bedroom in which she was found. Even if we assume, without deciding, that something more than the detained occupants' denials that the room was theirs was needed to reasonably believe defendant had joint or exclusive control over the locked room, we conclude the officers were justified in kicking open the locked door as part of the protective sweep, which we discuss more fully below.

2. Protective Sweep Prior to a Probation Search

Defendant contends the search of the locked bedroom cannot be justified as a protective sweep, and that she properly preserved the issue for review. We disagree.

Defendant did not object to the search as a protective sweep in her moving papers or during argument at the suppression hearing even though Massagli testified that the officers conducted a protective sweep of the house to ensure no dangerous persons were in the rooms before conducting the probation search. She has thus forfeited her challenge on appeal. (*People v. Vera* (1997) 15 Cal.4th 269, 276 ["It is both unfair and inefficient to permit a claim of error on appeal that, if timely brought to the attention of the trial court, could have been easily corrected or avoided"]; *Rogers*, *supra*, 21 Cal.3d at pp. 547-548 [discussing forfeiture doctrine generally].)

Even if the objection had been preserved, the protective sweep was proper. A protective sweep is a quick and limited visual inspection of the places where a dangerous person could be hiding, which is designed to ensure officer safety. (*Maryland v. Buie* (1990) 494 U.S. 325, 327 [108 L.Ed.2d 276] [protective sweep before executing arrest warrant at residence]; *Ledesma, supra*, 106 Cal.App.4th at p. 863 [protective sweep prior to a residential probation search].) A protective sweep is justified even though an officer lacks both a warrant and probable cause to believe that officer safety is threatened if there are articulable facts which, when taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the scene. (*Ledesma*, at p. 863.)

"[I]n determining the existence of reasonable suspicion, courts must evaluate the ' "totality of the circumstances" 'on a case-by-case basis to see whether the officer has ' "a particularized and objective basis" ' for his or her suspicion." (*Ledesma, supra*, 106 Cal.App.4th at p. 863.) In doing so, it is important to allow officers on the scene " 'to draw on their own experience and specialized training to make inferences from and

deductions about the cumulative information available to them that "might well elude an untrained person." ' " (*Ibid.*)

Here, law enforcement was justified in conducting a protective sweep of the residence, including the locked bedroom, before conducting the probation search. The information known to Massagli, an officer with 17 years of experience, justified the protective sweep undertaken.

Massagli received a citizen complaint that several Black men and women were selling drugs on the street corner, and that they came from a house with a big trailer on the property, which matched the description of the Fenwick Way house that defendant, an African American woman, listed as her address with probation. After knocking on the door, Massagli heard a man ask, "who is it?" Massagli and his team announced their presence and the purpose for their visit—to conduct a probation search. The door remained closed and Massagli heard feet shuffling and doors closing inside the residence. When the door finally opened, Massagli located seven individuals, none of whom were defendant. During a sweep of the residence, the officers discovered the locked master bedroom door. Although he questioned the detained occupants about having a key to the room or if the bedroom was any of theirs, no one responded that it was.

Given the delay in opening the door, the suspicious noise of activity during the delay, including closed doors, and the absence of defendant amongst the seven other occupants at the time, law enforcement could reasonably infer that someone had locked themselves in the bedroom. That person could easily pose a risk of danger to the officers, especially if they were preoccupied with searching the "nooks and crannies" of the house during the probation search. (*Ledesma, supra,* 106 Cal.App.4th at p. 864 [recognizing inherent distraction of carefully examining a probationer's room].)

The reasonableness of the protective sweep is further apparent given the complaint Massagli received that the occupants of the residence were selling drugs. "Firearms are,

of course, one of the ‘ “tools of the trade” ’ of the narcotics business.” (*Ledesma, supra,* 106 Cal.App.4th at p. 865.)

Relying on the totality of the information available, and filtered through the lens of his 17 years of training and experience, Massagli formed the reasonable opinion that another person was in the house and that this other person would pose a danger to him and his colleagues during the search. No more was needed to permit the limited intrusion of a protective sweep of the locked bedroom.

Defendant was subject to a valid probationary search condition and her residence was swept and searched pursuant to that condition. The trial court properly denied the motion to suppress.

B. Pitchess Motion

Prior to trial, defendant moved to discover complaints in Deputy Massagli’s personnel files showing a propensity for dishonesty, acts of moral turpitude, excessive use of force, false reporting and unlawful search and seizure. The trial court found defendant had satisfied the “relatively low” good cause threshold, and conducted an in camera hearing with Captain Powell, the custodian of records for Massagli’s personnel records. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 94 [good cause requirement embodies a relatively low threshold for discovery]; Evid. Code, § 1045, subd. (b).)

After the in camera hearing, the court granted the motion in part. The court ordered that contact information for witnesses and a summary of allegations related to IA report ending in 042 be provided to defense counsel, and Captain Powell provided defense counsel with that information subject to a protective order. Defendant requests that we review the in camera hearing to determine whether the trial court abused its discretion in not ordering the sheriff’s department to produce additional information from Massagli’s personnel file. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1220-1221 [“A

trial court's decision on the discoverability of material in police personnel files is reviewable under an abuse of discretion standard"].)

Evidence Code sections 1043 through 1045 and Penal Code sections 832.5, 832.7, and 832.8 codify *Pitchess, supra,* 11 Cal.3d 531, which recognized that "a criminal defendant may, in some circumstances, compel the discovery of evidence in the arresting law enforcement officer's personnel file that is relevant to the defendant's ability to defend against a criminal charge." (*People v. Mooc* (2001) 26 Cal.4th 1216, 1219.) " 'The statutory scheme carefully balances two directly conflicting interests: the peace officer's just claim to confidentiality, and the criminal defendant's equally compelling interest in all information pertinent to the defense.' " (*People v. Jackson, supra*, 13 Cal.4th at p. 1220.)

If a defendant seeking to discover an officer's personnel records makes "a showing of good cause, the custodian of records should bring to court all documents 'potentially relevant' to the defendant's motion." (*People v. Mooc, supra*, 26 Cal.4th at p. 1226.) "The trial court 'shall examine the information in chambers' [citation] 'out of the presence and hearing of all persons except the person authorized [to possess the records] and such other persons [the custodian of records] is willing to have present' [citations]." (*Ibid.*; see Evid. Code, §§ 915, subd. (b), 1045, subd. (b).) Thus, "both *Pitchess* and the statutory scheme codifying *Pitchess* require the intervention of a neutral trial judge, who examines the personnel records in camera, away from the eyes of either party, and orders disclosed to the defendant only those records that are found both relevant and otherwise in compliance with statutory limitations." (*People v. Mooc, supra,* at p. 1227.)

As requested, we have reviewed the sealed transcript of the in camera proceeding in which the trial court questioned the custodian of records under oath regarding Officer Massagli's personnel records. Based on our review, we conclude the trial court did not

abuse its discretion in finding that no additional disclosable evidence responsive to defendant's request existed.

III. DISPOSITION

The judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

ROBIE, Acting P. J.

/S/

BUTZ, J.